22nd April 1948]

(After lunch--2-30 p.m.)

(2) THE MADRAS LAPSED ACTS (REMOVAL OF DOUBTS) BILL, 1948 (L.A. BILL NO. 15 OF 1948).

THE HON. SRI K. MADHAVA MENON :—" Mr. President, Sir, I move—

> '*that the Madras Lapsed Acts (Removal of Doubts) Bill,* 1948 (*L.A. Bill No.* 15 *of* 1948) [a] *as passed by the Legislative Assembly be taken into consideration at once.*'

" Sir, one hundred and seventy Acts were enacted in all by His Excellency the Governor of Madras during the section 93 situation which lasted from the 30th October 1939 to the 30th April 1946. Out of these, 93 Acts are to be re-enacted or repealed by the Madras Re-enacting and Repealing Bill No. I, which has now been postponed to to-morrow, 42 by the Madras Re-enacting Bill No. II and 4 by the Madras Re-enacting Bill No. III. Eight other Acts have been repealed by various Acts passed recently. The Madras Restriction of Habitual Offenders Bill, 1948, proposes to repeal one of the Acts; and the Madras Tobacco Taxation of Sales and Licensing (Re-enacting) Bill, 1948, proposes to re-enact one and repeal another of the Acts. Thus 150 Acts have been or are about to be dealt with; and the 20 Acts which remain are to be allowed to lapse on the 30th April 1948. In the case of 10 of these Acts, it is considered necessary to provide, that upon the expiry of the Acts, section 8 of the Madras General Clauses Act, 1891, shall apply, so that the expiry of the Acts may not affect anything done, etc., under the Acts, when they were in force, and that the Acts amended by the expiring Acts shall have operation, as if the latter Acts had never been re-enacted.

" Sir, under sections 8 and 8-A, the effect of repealing of an Act has been mentioned. Section 8 states, that where any Act to which this provision applies, repeals any other enactment, then the repeal shall not—

(*a*) affect anything done or any offence committed, or any fine or penalty incurred or any proceedings begun before the commencement of the repealing Act; or

(*b*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*c*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(*d*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(*e*) affect any fine, penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

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a Printed as Appendix II on page 202 infra.

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(*f*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such fine, penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.'

"It was brought to our notice that unless the Acts specified in the schedule are specifically repealed, section 8 of the General Clauses Act may not apply and so certain proceedings already taken or pending now cannot be proceeded with unless they are specifically brought under section 8 of the General Clauses Act. Otherwise there is no repeal and doubts will be raised whether it will apply to lapsed Acts. This Bill is therefore introduced as a matter of abundant caution so that doubts may not be raised about action pending or taken under the Acts whenever they lapse.

"Sir, clause 2 (*a*) makes all past actions valid and future actions are covered by clause 2 (*b*). The Bill is merely intended to remove certain doubts, because it may be argued that section 8-A of the General Clauses Act would apply if such amendments are not brought forward. To avoid such doubts, clause (*b*) has been introduced. It is very doubtful whether any objections will arise at all, and it is only as a matter of abundant caution that this Bill has been prepared and I move that it be taken into consideration at once.

"Sir, my hon. Friend, Mr. Bhima Rao while speaking about the other Bill that was considered just before this Bill, raised certain doubts. It is to avoid such doubts that I have brought this Bill before the House, which I am moving for its consideration."

SRI R. SURYANARAYANA RAO :—"May I suggest, Sir, that this Bill may also be taken up to-morrow after the three Repealing and Re-enacting Bills are taken up for consideration, after you have given your ruling? Sir, if any member of this House takes it into his head that an Act that is put under the schedule for repeal should not be there, but should be considered and discussed individually, then all sorts of complications will arise."

THE HON. SRI K. MADHAVA MENON :—"Sir, the various Acts referred to in the schedule to this Bill are Acts which expire or lapse after 30th April 1948, and this Bill only applies to such lapsed Bills and it has nothing to do with repeal at all."

MR. PRESIDENT :—"The question is, that the Bill for the removal of doubts regarding the operation of certain enactments, (L.A. Bill No. 15 of 1948) as passed by the Legislative Assembly be taken into consideration at once."

* SRI B. BHIMA RAO :—"Mr. President, Sir, as I stated before, my doubts are not at all resolved, but on the other hand

they have been enhanced by this Bill for the removal of doubts. For instance, let us take the first of the Acts referred to in the schedule to this Bill, that is Act XIV of 1941. This amending Act, which has been passed for amending the Madras Local Boards Act, 1920, gives power to the Provincial Government to supersede for a period not exceeding three years any district board which had been dissolved and is waiting reconstitution under section 45 of the Act. Now, since this Act lapses on the 29th April 1948,—and since there are several district boards which are in a state of suspended animation,—what is their legal position and status on the 30th April? If it is under the original section 45 of the Local Boards Act that the Government supersedes any district board, that is to say when they are not competent to perform such functions, their action will become illegal. But under this Amended Act, the Government is given power to supersede these Boards for other reasons as well . . ."

MR. PRESIDENT :—" Then we go back to the old Act."

SRI B. BHIMA RAO :—" Then Sir, am I to take it that those district boards with the previous members that were in existence on 31st March 1947 should come back? Taking the case of the Bellary District Board for instance which is in a state of suspension waiting to be reconstituted, am I to take it that those members who were before should come back? I should like to be clear of that position, Sir."

MR. PRESIDENT :—" The present members will continue and the district board will be governed by the old Act."

SRI B. BHIMA RAO :—" That position is not quite clear, Sir. Section 45 follows the previous section . . ."

MR. PRESIDENT :—" That is the only construction that can be put. Let us not go into that matter at present. Let us see if there is any objection to this legislation."

THE HON. SRI K. MADHAVA MENON :—" Sir, a subsequent Act has been passed by the legislature giving all the powers of the Council to the Special Officer and therefore it does not affect the position at all."

SRI B. BHIMA RAO :—" I do not know why these Acts also are not allowed to lapse along with the other 20 Acts referred to in the Statement of Objects and Reasons."

MR. PRESIDENT :—" They are allowed to lapse. It is only to remove the doubt whether they lapse automatically or are to be repealed, that this Bill is enacted, which says that they are definitely repealed. That is how I see it.

" The question is—

' *that the Madras Lapsed Acts (Removal of Doubts) Bill, 1948 (L.A. Bill No. 15 of 1948) be taken into consideration at once*'."

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The motion was put and carried.

Clause 1 was put and carried.

Clause 2 was put and carried.

The Schedule was put and carried.

The Preamble was put and carried.

THE HON. SRI K. MADHAVA MENON :—" Sir, I move—

' *that the Bill be passed into law*'."

The motion was put and carried and the Bill was passed into law.

(3) THE MADRAS TOBACCO TAXATION OF SALES AND LICENSING (RE-ENACTING) BILL, 1948 (L.A. BILL NO. 12 OF 1948).

THE HON. SRI B. GOPALA REDDI :—" Sir, I move—

2-45 p.m. ' *that the Madras Tobacco Taxation of Sales and Licensing (Re-enacting) Bill, 1948 (L.A. Bill No. 12 of 1948)* [a] *as passed by the Legislative Assembly be taken into consideration at once.*'

" Sir, the hon. Members of the House might know that we had a Tobacco Taxation Bill enacted in 1939 under which we were taxing all the sales of tobacco. But in 1944 we entered into a sort of agreement with the Government of India that in lieu of Rs. 22 lakhs to be paid to us we would impose no taxation on tobacco goods. We repealed our original Act of 1939 because we entered into that sort of agreement. Now the present Bill seeks to repeal that repealing Bill of 1944 and to revive the old Act of 1939. Since we cannot immediately impose those duties on tobacco under the Act of 1939 we shall keep it in suspense for the time being so that whenever we want we may be enabled to re-impose those duties, because that agreement with the Government of India is still lasting. Now we have entered into negotiations with them and we are trying to persuade them to see that we get a fair deal. In their Central Excise duties which they are collecting they get nearly Rs. 300 lakhs. We want that at least 50 per cent of it should be given to our Province. For the time being we are getting only Rs. 22 lakhs. So, Sir, we do not know how these negotiations are going to develop and we do not know what our attitude will be hereafter. But this Bill will enable us to re-impose those tobacco duties if and when it is desired by us. For the time being the original Act of 1939 will be revived and will be kept in suspense under this Act. I therefore want that this Bill be taken into consideration at once."

* SRI B. BHIMA RAO :—" Sir, I want to say a few words with regard to the principles of this enactment. As you know we passed an Act in the year 1939 levying a tax on tobacco. And some time later the Central Legislature also passed a similar Act. The poor dealers and merchants who were trading in tobacco were subjected to enormous taxation by the Provincial Government as also the Central Government. They were being subjected to so

[a] Printed as Appendix III on pages 203–204 infra.